priced ILEC billing and collection functions. As stated previously, CPP is implemented elsewhere by arrangements between the CMRS carrier and local fixed operator whereby the fixed operator retains some portion of the CPP revenue for its provision of billing and collection for each CPP call. The availability of ILEC-based billing and collection goes to the very heart of whether CPP can and will be viable in the United States market. Without a cost-effective means of receiving compensation for completed CPP calls, CMRS providers will not be able to offer a CPP service option that is priced at a level that gains marketplace acceptance.

Because of the ubiquity of their billing "coverage," ILECs are uniquely efficient providers of billing and collection services, making them indispensable parties to implementing CPP. No economically viable alternative to ILEC delivery of a bill to end users currently exists, nor can the Commission expect that CMRS providers or any third party will be able over the near or medium term to replicate the competitive advantage that ILECs enjoy in this area. Ideally, ILECs and CMRS carriers should voluntarily develop a billing and collection mechanism acceptable to both sides. As previously noted, however, much as in interconnection, ILECs generally do not have the incentive to enable their potential competitor to compete more directly with them. In the event that private negotiations between CMRS carriers and ILECs to implement CPP billing and collection fail, the FCC should have "backstop" rules requiring ILECs to provide non-discriminatory access to billing and collection for CPP at incremental, cost-based rates.

...continued

Group, September 2, 1999 (submitted by PCIA on September 8, 1999, in WT Docket No. 98-205).

1. Business Models for CPP Billing and Collection

The nature of the problem of making CPP a viable service without ILEC billing is illustrated in the attached DETECON White Paper. The White Paper contains figures that graphically illustrate the differences in the business models when: 1) the wireless subscriber pays for each call (the "U.S. Status Quo Model"); 2) the calling party pays and the fixed local carrier bills and collects (the "International Model"); 3) the calling party pays the CMRS carrier directly for the call (the "Bill Direct Model"); and 4) the calling party pays and its subscription carrier bills and collects (the "Sent Paid Model").

The White Paper Figures illustrate both the subscriber-to-carrier billing relationships that change depending upon the particular business model as well as the necessary changes among carrier billing relationships critical to each model. The models that foster a situation where there is a single bill and single payee for a single CPP call are the Sent Paid Model (Figures 2 and 4) and the Bill Direct Model (Figure 11) under which the CMRS carriers contract with the call originating carrier to bill on their behalf. The Direct Bill Model, which is proposed in the *Notice*, is an entirely different business paradigm under which the landline calling party will receive not one, but two or more bills for the same call. It is easy to see how this will create confusion among consumers and frustration with any CPP service a CMRS carrier seeks to introduce. While there may be some large CMRS carriers with the ability to make a Bill Direct Model work for them, PCIA submits that the Sent Paid Model is simpler for consumers to understand and far easier for carriers to implement, assuming FCC rules require carriers to reach agreements on implementing it as an option.

As explained in greater detail in the attached DETECON White Paper, the billing and collection process can be divided into a number of distinct components.[88] A brief overview here may be helpful. The call billing process begins with creation by the CMRS provider's Mobile Switching Center of a Call Detail Record ("CDR") containing the raw data relating to each call to a CMRS subscriber. The CDRs from the provider's various switching centers are collected into a central database and converted into a standardized format. The CDRs are then rated to determine the appropriate charge for each call. By electronically combining all the component data that will appear on a bill (billing name and address, charges, adjustments, past payments, taxes, etc.), an invoice is created. Bill fulfillment is the next step, involving the physical printing, stuffing and mailing of the bill to the calling wireline subscriber. At the end of the billing process, an account receivable is created for the CPP customer. The collections process begins with the processing of the payment from the calling party and/or activating arrears management procedures to attempt collection from customers not paying on time. Finally, customer care, involving a call center to handle customer queries and make billing adjustments, is a critical adjunct to a successful billing and collection process.

Under the CPP Bill Direct Model, which is the CPP Model the *Notice* discusses at greatest length, the CMRS provider could be responsible for performing all these functions itself, or it could contract with a third party, such as a clearinghouse, or with the Originating Subscription Carrier (*i.e.*, the LEC for local calls) that already bills the wireline caller on a regular basis, to perform some or all of these functions.

The CMRS provider should be able to collect billing data and rate the calls much as it already does for its non-CPP subscribers. After these first two functions, however, a CMRS

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[88] *See* DETECON White Paper at 3.3.1 and Figures 7 and 8.

provider attempting to perform all billing and collection functions on its own faces significant hurdles.

2. The Cost and Logistics of CPP Direct Billing Are Prohibitive to Most CMRS Carriers

Because the CMRS provider in most cases would have no pre-existing relationship with the calling party, it would, at a minimum, have to purchase billing name and address ("BNA") information from the ILEC to create an invoice and perform bill fulfillment.[89] Unlike bills to its own CMRS subscribers, or the bills from an ILEC to wireline subscribers, the bills to CPP customers are likely to be quite small — even less than a dollar in many cases, based on current trends in wireless per-minute pricing. DETECON estimates that, on average, it costs between $1.50 and $3.50 to produce a monthly bill to a customer.[90] Consistent with this estimate, Vanguard previously calculated that it spends between $2.50 and $3.00 to produce and mail a bill.[91] The cost of sending most bills would exceed the amount of the bill itself, making direct billing by the CMRS carrier for its CPP services infeasible. The average duration of a CMRS call is under two minutes. Assuming a CPP rate of $0.30 per-minute, a CPP customer would have to make four to seven calls in a billing period to CPP subscribers of the *same* CMRS provider just to cover the cost to the bill. This is obviously an uneconomic proposition.[92]

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[89] Although the ILEC must provide this information (see discussion in part VI.B. *infra*), there is still the question of determining a reasonable price for this component. Even though the CMRS carrier could record the BNA information for future billings, it would have no way of learning of changes in the BNA without additional queries to the ILEC database.

[90] *See* DETECON White Paper at 3.3.3.1. This estimate includes all functions from CDR collection through bill fulfillment.

[91] Vanguard NOI Comments at 10.

[92] *See* DETECON White Paper at 3.3.3.1.

Even assuming that the economic infeasibility of direct billing could be overcome, the issue of collection remains. Under the unmodified "Bill Direct" model, which is illustrated in Figure 3 of the White Paper, a calling party will pay for one CPP call through two bills: the landline portion of the call will be billed by the Primary Subscription Carrier, and the airtime will be billed by the CMRS provider of the called party.[93] A CPP customer who makes several calls to wireless customers served by different carriers would receive a number of small bills from carriers she may not even recognize.[94] Due to the existing competition in the wireless industry, it is possible that a wireline subscriber could receive separate CPP bills from up to ten different CMRS carriers during the course of a month, just from placing local calls to CMRS subscribers.[95] This situation makes it less likely customers would feel an obligation to pay the many bills for relatively insubstantial amounts they may receive — if, in fact, the bills are ever opened instead of being discarded as "junk mail."[96] It is already well recognized that consumers prefer the convenience of consolidated bills.[97] A CPP regime that institutionalizes billing performed by CMRS providers will result in a mailbox full of separate CPP bills with small dollar balances. This could irritate many consumers who, as a protest or simply out of

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[93] *See id.* at Figure 3. The Figure reflects a long distance call to illustrate the additional complexities involving the carrier to carrier relationships, but the customer billing issues remain the same for local calls, where the Originating Subscription Carrier would be the LEC.

[94] Most consumers understand that it is not cost-effective for any service vendor to pursue collection actions for *de minimis* amounts. Even sending a reminder notice could cost more than the amount of the invoice. *See* DETECON White Paper at 3.3.3.1.

[95] *See* Vanguard NOI Comments at 9, n.21.

[96] Indeed, the consumer may not remember that she placed a CPP call using that carrier by the time the bill arrives.

[97] Indeed, this is one factor pushing the convergence in the telecommunications industry, as companies position themselves to provide telephone, internet and video programming services with one umbrella provider and a single consolidated bill.

frustration, may choose simply not to remit payment. CMRS carriers cannot afford to give away their services and Bill Direct should not be the only CPP implementation option authorized by the Commission.

Finally, a CMRS provider evaluating the feasibility of offering a CPP option must also consider customer care costs. DETECON calculates that customer care costs run between five and seven dollars per subscription customer per month, even with relatively high levels of scale.[98] While it is not known what the costs would be for serving casual CPP customers, it would be fair to assume that, at least initially, call volumes to customer care centers would be higher due to some consumer confusion relating to the new service. Even if per customer costs are somewhat lower for CPP customers than for regular subscribers, the average revenue per customer also would be significantly lower. These customer care needs on top of the expensive billing costs and a potentially low collection rate operate as a disincentive for CMRS providers to offer CPP.

3. Billing Performed by the Originating Subscription Carrier More Closely Reflects the International CPP Model

By contrast, if several functions of the billing and collection process were performed by the calling party's ILEC at an incremental rate while providing a reasonable profit to the ILEC for the functions it provides, substantial cost savings could be achieved.[99] An ILEC has unique advantages as a provider of telecommunications billing services, many of which are a direct result of the carrier's longstanding monopoly status. Specifically, incumbent LECs have

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[98] *See* DETECON White Paper at 3.3.3.1.

[99] Under this scenario, the CMRS provider would continue to collect, format and rate billing records, while the ILEC would perform invoice creation, bill fulfillment, payment processing and arrears management functions.

tremendous market share in their service territories, allowing them to achieve significant economies of scale. As Figure 5 in the White Paper illustrates, the cost per bill drops dramatically as the volume of bills processed increases, and overall billing costs rise only gradually as volumes increase. Incumbent LECs have preexisting databases containing the needed billing data and accounts receivable for their customers, and they already send out bills every month. The incremental cost of including additional call billing information in a bill they already produce is *de minimis*.[100] DETECON was unable to provide PCIA with the actual incremental cost for adding a line of bill detail because ILECs treat this information as proprietary. Nevertheless, based on its experience, DETECON estimates the cost to be less than a penny.

With ILEC-provided billing, consumers would not be barraged with a number of small CMRS bills, each requiring a separate check in payment. Collection problems would also be reduced. Incumbents have strong brand name recognition and consumers generally recognize their phone bill when it arrives. Consumers also are accustomed to paying the bill, which often contains charges for other telecommunications services in addition to ILEC-provided local exchange service.

For CMRS carriers there are no practical economic alternatives to ILEC billing of CPP. While the use of national clearinghouses to perform much of the pre-bill fulfillment function could yield certain efficiencies of scale, the cost differences between ILEC billing and clearinghouse billing — particularly at the bill fulfillment stage — is still dramatic, as Figure 6 indicates. Moreover, the ILEC would still need to permit the clearinghouse to insert its CPP bill

[100] *See, e.g.*, DETECON White Paper at 3.3.3.3.

pages into the ILEC bill to solve the one call–two bills problem.[101] Clearinghouses, however, have encountered the same problems with ILECs — unwillingness to negotiate or excessive rates — that CMRS providers trying to implement CPP have encountered. Several major LECs have refused to allow clearinghouses to put CPP calls onto their bills.[102] As a result, there currently is no entity other than the ILECs capable of providing ubiquitous billing and collection for CPP across the country.[103]

The *Notice*, as well as various commenters in earlier stages of this proceeding, suggested that credit card billing might present an alternative to ILEC billing. Credit card billing is equally impractical because the time and effort required of the caller to input credit card account and expiration date numbers to complete a CMRS call are overly burdensome.[104] It is reasonable to assume that many potential callers would not complete the call due either to frustration or concerns regarding the security of their credit card information.

Because of the problems described above, ILEC-provided billing is the only means by which CPP can become viable. Yet the record in this docket contains specific, unrefuted examples of ILECs that have refused to provide CMRS carriers with billing and collection for CPP.[105] Also in the record is the explicit statement by Southwestern Bell ("SBC") that it does

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[101] Clearinghouse-mailed bills could at least reduce the total number of CPP bills in consumer mailboxes, assuming that multiple CMRS providers could agree to use the same clearinghouse.

[102] *See* DETECON White Paper at 3.3.3.4. *See also*, Airtouch NOI Comments at 21.

[103] *See* Vanguard NOI Comments at 11.

[104] A call that normally would require dialing 7 to 11 digits would require a total of at least 27 to 31 digits for credit card billing. Call completion time would be increased further by additional voice prompts, increased dialing errors and system time-outs while the calling parting locates her credit card. This additional effort would be required without knowing whether the called party even would be available to take the call.

[105] *See, e.g.*, Airtouch NOI Comments at 21; Omnipoint NOI Comments at 16, n. 27.

not intend to offer this service in its Pacific Bell territory — representing 18 million access lines — unless required to do so by this Commission.[106] SBC maintains this position even though Pacific Bell's own tariff on file with the California PUC states that the "Utility will provide Billing and Collection Services for providers of telecommunications related services" which are defined to include "wireless services."[107] Now that the Commission has declared CPP calls to be CMRS calls, SBC's position is even less tenable.

As SBC's outright refusal demonstrates, ILECs obviously recognize that it is not in their best interest to play any role in enabling the success of CPP.[108] The Commission cannot agree that the protection of an ILEC's own competitive interests — to the material detriment of potential competitors — provides sufficient grounds on which to permit the ILEC to deny access to billing services. Such reasoning violates both the spirit and the letter of the 1996 Act, and defies Congress' intent to promote competition in local telecommunications markets.

Some ILECs are willing to provide CPP billing and collection, but treat it as an "optional product" and price it at market-based rates, just as they would for any unregulated, enhanced service. DETECON's research reveals that the existing market price for billing on behalf of another carrier ranges from $0.30 to $1.20 *per call detail.*[109] Yet, with an average call duration

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[106] *See* Airtouch NOI Comments at Appendix B (letter from David Kerr, Southwestern Bell Corp.). Although the letter only states the policy of SBC's Pacific Bell subsidiary, Omnipoint reports that the same policy applies to SBC's entire service area, representing 8 states and 37 million access lines. *See* Omnipoint NOI Comments at 16, n. 27; SBC Communications, Inc., *Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934*, Mar. 15, 1999 at 4 (reporting access line data).

[107] Schedule Cal. PUC No. 175-T, Section 8.5.1, revised by Advice Letter No. 19005 (Sept. 3, 1997).

[108] Airtouch NOI Comments at Appendix B (letter from David Kerr, stating that "[w]e have determined that it is not in our best interest to bill and collect for CPP at this time").

[109] *See* DETECON White Paper at 3.3.3.3. DETECON's experience suggests that these rates are far in excess of the ILEC's incremental cost. By contrast, the country case studies for

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of about two minutes and CPP rates of $0.20 to $0.40 per-minute, a CMRS provider can only expect a total of $0.40 to $0.80 in revenue per call.[110] Without being able to share in any of the benefits of the ILECs' natural billing advantage, and obtain these services at the ILECs' incremental cost plus a reasonable profit, CPP billing and collection costs will exceed the revenue earned from the service.[111]

This situation should catalyze the Commission to action. If it does nothing to prevent ILECs from refusing to bill for CPP or from collecting market-based charges from CPP providers, only ILEC-affiliated CMRS carriers will have the wherewithal to offer any type of broad-based CPP service. Indeed, whenever an ILEC affiliate participates in a competitive market but uses the services or network of the ILEC, it is relatively price insensitive. An ILEC-affiliated CMRS provider, for example, can "afford" to pay the market based rates for its affiliate's billing and collection services because any loss to the affiliate relating to its provision of CPP is an equivalent gain for the parent corporation. The fact that an ILEC may offer billing and collection services to other CMRS providers at the same rates as its own affiliate does not mean that those services are being made available to competitors in a manner that allows them to offer new services such as CPP.

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Mexico, Argentina, Chile and Germany indicate that for CPP calls, the originating landline carrier typically receives between US$0.01 and US$0.06 per minute, representing between four and 22 percent of the full CPP rate, as compensation for the billing and collection functions. In some cases, the landline carrier receives the same amount for a CPP call as it does for a landline to landline local call. *See* Country Case Studies at 2.3, 3.3, 4.7, and 5.3.

[110] *See* DETECON White Paper at 3.3.3.3.

[111] *See also* Omnipoint NOI Comments at 16, n. 27 (stating that Bell Atlantic is requesting a "set-up fee" exceeding $500,000 to provide CPP billing in New York).

Furthermore, in establishing a CPP billing framework, the Commission should appreciate that the transaction costs involved in negotiating individual billing arrangements with each ILEC are not insubstantial. Considering that many states have over a dozen incumbent LECs, CMRS providers covering multiple states would have to negotiate substantial numbers of individual deals.[112] Federal guidelines or minimum requirements for ILEC billing could reduce the range of issues to be negotiated, thus reducing the time and expense of reaching billing agreements for those CMRS providers that wish to offer CPP as an option.

B. The FCC Has the Jurisdiction to Require ILECs to Provide CPP Billing and Collection Functions

It should not be a matter of serious dispute that ILEC billing and collection functions satisfy the statutory definition of ILEC network elements.[113] Some commenters have argued that the statutory definition of network element necessarily limits the term to include only "information sufficient for billing and collection," such as BNA.[114] However, as described above, the provisioning of BNA is *not* sufficient for economically-feasible CPP billing and collection.[115]

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[112] Ideally, a CMRS subscriber on a CPP service plan should be able to receive CPP calls from any caller, regardless of that caller's local service provider. The inability, due to the absence of a billing agreement, to accept CPP calls from a particular ILEC service territory would seriously jeopardize the marketability of that CMRS carrier's CPP service option.

[113] Under the statute a "network element" is "a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service." 47 U.S.C. § 3(29).

[114] *See* SBC NOI Comments at 4-5; CTIA NOI Comments at 5-6.

[115] Moreover, Section 3(29)'s mention of "information sufficient for billing and collection" is one of several items in a list meant to illustrate the broad inclusiveness of the term network element; there is no suggestion that the list of items was intended to be exhaustive.

The inclusion in the 1996 Act definition of network elements of a specific reference to billing and collection evidences Congress' understanding that there could be no competition if the ILEC could deny competitors an effective means of obtaining revenue for services provided. In *AT&T v. Iowa Util. Bd.*, the Supreme Court confirmed the inclusive nature of the Act's "network element" definition.[116] In dismissing arguments by ILECs that the definition should be interpreted narrowly, the Court held that "Given the breadth of this definition, it is impossible to credit the incumbents argument that a 'network element' must be part of the physical facilities and equipment used to provide local phone service."[117] The Court went on to uphold the Commission's broad application of the definition as "eminently reasonable."[118]

The Commission also has given a broad reading to a related provision, Section 272(c)(1), regarding the obligation of BOCs to provide non-discriminatory access to "goods, services, facilities and information"— similar to Section 3(29)'s "features, functions and capabilities" language — concluding that:

> We find that neither the terms of section 272(c)(1), nor the legislative history of this provision, indicates that the terms "goods, services, facilities, and information" should be limited in the manner suggested by some commenters. We therefore decline to interpret the terms in section 272(c)(1) as including only telecommunications-related or, even more specifically, common carrier-related "goods, services, facilities, and information." Similarly, we reject arguments . . . that the term "services" should exclude administrative and support services. . . .

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[116] *AT&T v. Iowa Util. Bd.*, 119 S. Ct. 721, 733-34 (1999). Specifically concluding that the definition encompassed the ILECs' operational support systems ("OSS"), the Court stated that "OSS, the incumbent's background software system, contains essential network information as well as programs to manage *billing*, repair ordering, and other functions." (emphasis added) *Id.*

[117] *Id.*

[118] *Id.*

> [W]e find that there are certain administrative services, such as *billing and collection services* that unaffiliated entities may find useful.[119]

Thus, because the provision of BNA is not realistically sufficient to permit CMRS providers to perform their own billing and collections, and because Congress and the Commission have recognized the importance of the billing and collection function, the term "network element" should be interpreted to include unbundled ILEC billing and collection functions.

Section 251 requires that all incumbent local exchange carriers must provide access to unbundled network elements ("UNEs") to any other carrier "on rates, terms and conditions that are just, reasonable and nondiscriminatory."[120] Under Section 251(d)(2), the FCC is authorized to determine which network elements must be provided on an unbundled basis. In doing so, the Commission is directed to consider: (1) whether access to ILEC proprietary network elements is necessary and (2) whether the failure of an ILEC to provide a non-proprietary network element "would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer."[121]

In *AT&T v. Iowa Utils. Bd.*, the Supreme Court vacated the Commission's UNE rule developed and instructed the Commission to re-examine the scope of ILEC unbundling obligations.[122] Nevertheless, under virtually any reasonable reading of the statute, and under any conceivable criteria the FCC has adopted, the FCC will be able to determine that ILEC billing

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[119] Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 21905, 22007-08 (1996) (emphasis added).

[120] 47 U.S.C. § 251(c)(3).

[121] 47 U.S.C. § 251(d)(2).

[122] *AT&T v. Iowa Util. Bd.*, 119 S. Ct. at 736. As of the date of this filing the FCC has adopted, but not yet released, its order in response to the remand.

and collection services should be identified as a network element to be unbundled under Section 251(d)(2) and made available to CMRS carriers at an incremental, TELRIC price.

The Commission recognized in the *UNE Second Notice* that both the Eighth Circuit and the Supreme Court have construed the 1996 Act as differentiating the "necessary" standard for proprietary elements in 252(d)(2)(A) from the "impair" standard for non-proprietary elements in 252(d)(2)(B).[123] Billing and collection can hardly be considered a proprietary process of the ILECs. The characteristics that make ILEC billing valuable — the ubiquity of ILECs' service and their historical relationship with subscribers — were developed largely as a result of the ILECs' (former and in some cases, continuing) status as monopoly providers of local exchange service, and not due to particular capital investments, unique proprietary software or research and development efforts.

Under the non-proprietary network element standard, the Commission need only determine that lack of access to ILEC billing and collection services would "impair" the ability of a CMRS carrier to provide CPP service. This test would be met even if the Commission were to adopt a very strict definition of "impair" that requires, for example, a showing of material detriment or severe hardship. Indeed, because there are no economically-viable alternatives to ILEC billing for CPP, the lack of access to this element would even satisfy the more exacting "necessary" standard. As explained above, without ILEC billing, there will be no CPP offering in a given area and, consequently, no advancement in CMRS carriers' ability to provide local exchange competition via CPP.

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[123] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98, 95-185, *Second Further Notice of Proposed Rulemaking* (rel. Apr. 16, 1999) ("*UNE Second Notice*").

As explained above, Section 272(c)(1)'s non-discrimination provisions, in conjunction with Section 251's requirement that ILECs provide nondiscriminatory access to network elements on an unbundled basis, provide the FCC with ample authority to require ILECs to provide billing and collection services for the provision of CPP by CMRS providers. In spite of this authority, however, some ILECs argue that requiring access to their billing and collection services would contradict the Commission's 1986 *Detariffing Order,* which detariffed billing and collection services provided by LECs to IXCs.[124] Such is not the case. When it adopted the *Detariffing Order* more than 12 years ago, the FCC did not anticipate the significance of ILEC billing and collection to the implementation of services competitive to local landline services, such as CPP. At that time, local exchange carriers and IXCs provided no competition to one another, unlike CMRS providers and ILECs can today.

More significantly, the record upon which the Commission decided its *Detariffing Order* presented very different circumstances to those in this proceeding. Specifically, the Commission concluded, regarding IXC billing, that:

> [B]ecause there is sufficient competition to allow market forces to respond to excessive rates or unreasonable billing and collection practices on the part of exchange carriers, no statutory purpose would be served by continuing to regulate billing and collection service for an indefinite period. . . . [T]he record clearly indicates that significant competition exists and will continue to develop. It is important to recognize that competition is defined not only by credit card companies, collection agencies, service bureaus and the LECs, but by the customers (ICs) themselves.[125]

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[124] Detariffing of Billing and Collection Service, *Report and Order*, 102 FCC 2d 1150 (1986) (holding that the Commission has only Title I jurisdiction onver billing and collection services) ("*Detariffing Order*").

[125] *Detariffing Order*, 102 FCC 2d at 1170.

As explained above, there is no significant competition for CPP billing and collection because no entity other than the ILEC can provide these services in a cost effective manner. A typical bill for long distance service is much higher than what a typical CPP bill likely will be, making it easier for an IXC to absorb the administrative cost of direct billing.[126] In fact, many IXCs are beginning to impose monthly minimum charges on their customers, presumably to recover these administrative costs. Collections also are less of a concern for direct or third-party IXC billing because most consumers have an established relationship with their IXC, and generally do not receive multiple bills from various IXCs.

Moreover, last year the Federal-State Joint Board on Universal Service effectively rejected the *Detariffing Order*'s holding that the Commission lacks Title II jurisdiction over billing services, concluding that "a carrier's billing and collection practices for communications services are subject to regulation as common carrier services under Title II of the Act."[127] Regardless of the Commission's Title II jurisdiction, however, the *Detariffing Order* explicitly established that the Commission has authority under Title I of the Communications Act to require ILECs to permit access to their billing and collection services. Section 2(a) gives the Commission jurisdiction over interstate and foreign communication, which is defined in Section 3(33) to include "services . . . incidental to such transmission."[128] The Commission stated that "these powers would be sufficient to enable us to regulate exchange carrier provision of billing and collection service . . . ," but that the exercise of such ancillary jurisdiction "requires a record

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[126] Even so, most IXCs maintain billing and collection arrangements with ILECs for their subscription customers and for casual callers.

[127] Federal-State Joint Board on Universal Service, *Second Recommended Decision*, 13 FCC Rcd 24744, 24771 (1998).

[128] 47 U.S.C. §§ 152(a), 153(51).

finding that such regulation would 'be directed at protecting or promoting a statutory purpose.'"[129]

As explained in these and other comments, the offering of CPP service, which is only viable with the use of ILEC cooperation in billing, will promote wireless-wireline competition in the local telecommunications and collection markets. The Commission should have an ample record in this proceeding to determine that the adoption of national billing standards for CPP would be "directed at" the 1996 Act's purpose of promoting competition.[130] Moreover, the Commission has a statutory mandate to ensure that "[a]ll charges, practices, classifications and regulations for and *in connection with*" Title II services "shall be just and reasonable."[131]

Additional authority for the Commission to impose a national regulatory framework for CPP, including a national set of billing standards, is found in Section 332. Section 332(c)(3)(a) provides that:

> . . . no state or local governments shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services.[132]

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[129] *Detariffing Order*, 102 FCC 2d at 1169-70 (citing Second Computer Inquiry, 77 FCC 2d 384, 433 (1979), *aff'd on reconsideration*, 84 FCC 2d 50, 92-93 (1980), 88 FCC 2d 512 (1981), *aff'd sub. nom. CCIA v. FCC*, 693 F.2d 198 (DC Cir. 1982), *cert. denied sub nom. Louisiana PSC v. United States*, 461 U.S. 938 (1983)).

[130] The 1996 Act was intended to "accelerate rapidly private sector deployment of advanced telecommunications and information technologies to all Americans by opening all telecommunications markets to competition." H.R. Rep. No. 104-458, 104th Cong., 2d Sess. (Jan. 31, 1996). By making wireless service more affordable, CPP also would help to make communications "available, so far as possible, to all the people of the United States," the goal expressed in Section 1 of the Act. 47 U.S.C. § 151.

[131] 47 U.S.C, § 201(a) (emphasis added).

[132] 47 U.S.C. § 332(c)(3)(a).

By explicitly preempting state entry and rate regulation of wireless services, the 1993 Budget Act placed jurisdiction over CMRS firmly in the hands of the Commission. Because the billing and collection function is such a major cost component of providing CPP, it is inextricably linked not only to the rates charged for the service, but to the ultimate feasibility and entry of the service into the marketplace. Indeed, ILECs recognize that billing is an integral component of CPP because earlier in this proceeding many of them argued that CPP is *only* a billing practice.[133] Though the Commission has decided that CPP is a CMRS service, the billing and collection issues will make or break the service. Thus, any Commission authority to develop a regulatory framework for CPP must, almost by definition, include the authority to establish standards regarding billing services with which ILECs must comply.

The Commission has well developed authority to require ILECs to provide billing services to CPP service providers as an unbundled network element at TELRIC pricing. Such action will go far in enabling the offering of CPP service. However, a significant number of CPP calls will be interexchange calls. For these calls, it may be more logical to have the billing performed by the IXC that carries and bills for the landline portion of the call. Although all common carriers are subject to Commission jurisdiction and have obligations to operate in the public interest, PCIA recognizes that the extent of those obligations differ from one class of carrier to another. The Commission should evaluate the extent to which the billing and collection services of other carriers, such as IXCs, CLECs and even other CMRS carriers, should be made available to enable the nationwide and full-fledged offering of CPP service in the United States.

[133] *See, e.g.*, SBC NOI Comments at 3-4; U S West NOI Comments at 1-3.

C. The States Should Not Be Permitted to Prohibit ILECs from Providing Billing and Collection Services to CMRS Providers

As discussed above, Section 332(c)(3)(a) preempts states from regulating the entry of, or the rates charged for CMRS. However, the section does permit states to regulate "other terms and conditions" of CMRS. Some commenters have argued that billing and collection for CPP would fall under such "other terms and conditions," allowing states to regulate or even prohibit ILEC provision of such services. As emphasized earlier, however, the billing and collection function is such a vital component of CPP service that any state regulation of this function would affect the price of the service and create a *de facto* barrier to entry for the service.

The Commission previously has recognized that ILEC charges for IXC billing and collection services in turn affect the rates charged by IXCs for interstate communications.[134] The Commission precluded the states from regulating LEC-provided interstate billing and collection, stating that such preemption:

> seeks to promote the provision, by LECs as well as other vendors, of billing and collection service at reasonable prices . . . . When particular features of billing and collection provided by the LECs have not been offered competitively by other providers of billing services, or have had potential bottleneck attributes, we have taken appropriate regulatory steps to prevent exorbitant rates.[135]

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[134] *See* Public Service Commission of Maryland Petition for Declaratory Ruling Regarding Billing and Collection Services, *Memorandum Opinion and Order*, 4 FCC Rcd 4000, 4005 (1989), *aff'd, Public Service Comm. of Maryland v. FCC*, 909 F.2d 1510 (D.C. Cir. 1990) ("*Billing Preemption Order*") ("Billing and collection services of the kind provided by C&P for AT&T directly affect the conditions under which interstate carriers offer transmission services. The rates that LECs charge for billing and collection directly affect the costs of providing interstate transmission service and hence the rates that IXCs must charge their interstate customers.")

[135] *Id.*

Because CPP is jurisdictionally CMRS and thus is also an interstate service, the Commission should follow its precedent and preempt state regulation of ILEC-provided CPP billing and collection services.

Any state attempting to prohibit ILEC billing for CPP also would run afoul of Section 253(a) which states that:

> No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.[136]

A state prohibition on ILEC billing would certainly "have the effect of prohibiting" a CMRS provider from offering CPP service. Furthermore, Section 253(b) provides that any state regulation must be competitively neutral.[137] Any state regulation having the effect of increasing the cost of CPP or stifling its entry into the market would competitively disadvantage CMRS providers and would violate the Act.

There also are solid policy grounds on which to oppose state regulation of ILEC (or other carrier) billing and collection for CPP. As stated in the *Notice*, the Commission has a statutory mandate to "establish a federal regulatory framework to govern the offering of all [CMRS]."[138] This mandate recognizes that CMRS is by nature an interstate service and that most CMRS providers operate across jurisdictional boundaries. Inconsistent state ILEC billing and collection standards would hinder any nationwide implementation of CPP. Having to contend with different billing arrangements in each state will drive up a carrier's implementation costs for a

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[136] 47 U.S.C. § 253(a).

[137] 47 U.S.C. § 253(b).

[138] *Notice* at ¶ 36 (citing H.R. Conf. Rep. No. 103-213 at 490 (1993)).

service that may, depending upon how the other obstacles are addressed, be only marginally viable. It also could make any nationwide effort to educate consumers about CPP more difficult.

VII. CARRIER TO CARRIER RELATIONSHIPS: REVISED CMRS INTERCONNECTION MODELS

Finally, the *Notice* requests comment on whether the Commission, as an alternative to the CPP implementation method described in the *Notice*, ought to examine other models or regulatory frameworks to better realize CMRS-LEC competition in the United States. The *Notice* specifically cites the current framework of CMRS-ILEC interconnection rules as a possible candidate for additional examination and possible restructuring.[139]

PCIA believes reexamination of wireless and landline interconnection and access should not be the focus of a calling party pays proceeding.[140] In fact, the Commission already has an open docket on this matter. The Commission initiated a proceeding in late 1995 to establish a broad reciprocal carrier relationship between CMRS interconnectors and incumbent LECs and to examine the access or interconnection relationship between CMRS carriers and interexchange carriers.[141] The Commission ultimately folded the record in that proceeding into its larger local competition and interconnection proceeding implementing the provisions of the 1996 Act, and established a framework for CMRS-LEC interconnection that followed the landline CLEC

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[139] *See Notice* at ¶¶ 69-74.

[140] In its attempt to understand the various methods of implementing CPP, the Notice appears to relate the provision of CPP in Europe to the concept of asymmetrical compensation as it applies to voluntary interconnection agreements as provided by the FCC's rules. *Notice* at ¶ 72. Asymmetrical compensation is not CPP. Such a connection threatens to unnecessarily side track expeditious resolution of this docket. Those issues are more appropriately addressed in a separate Commission proceeding.

[141] *See* Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *Notice of Proposed Rulemaking*, Docket No. 95-85, 11 FCC Rcd 5020 (1996) ("CMRS Interconnection Notice").

framework of Sections 251 and 252.[142] Significantly, however, the Commission did not disclaim its authority under Sections 2(a), 201 and 332 to act on CMRS interconnection matters outside this framework.[143]

PCIA believes that the Commission's exclusive authority over CMRS-LEC interconnection was well established prior to the Supreme Court's recent action affirming the Commission's jurisdiction to establish the "rules of the road" for landline local competition. In its *Local Competition Order*, the Commission was determined not to distinguish its unique authority over CMRS from its jurisdiction over landline carriers, apparently because it believed that a uniform "all-carrier" interconnection framework would suffice. As reflected in the petitions for reconsideration, oppositions, replies and *ex partes* filed by several CMRS carriers and PCIA, CMRS carriers were supportive of the Commission's actions in establishing a broad national interconnection framework that finally and irrevocably required the payment by ILECs of reciprocal compensation for the exchange of local telecommunications traffic. They were, however, concerned that the Commission failed to resolve all the issues raised in the 1995 CMRS-LEC Interconnection Notice. The petitions for reconsideration addressing the

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[142] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd. 15499 (1996) ("*Local Competition Order*"). The current FCC rules provide that CMRS carriers negotiate with ILECs for interconnection, that state commissions review and approve voluntarily negotiated agreements and that state commissions arbitrate unresolved issues and enforce the terms of approved CMRS-LEC interconnection agreements.

[143] *Id.* at 16005 ("We acknowledge that Section 332 in tandem with Section 201 is a basis for jurisdiction over LEC-CMRS interconnection"). As previously noted, the Supreme Court's decision in *AT&T v. Iowa Utilities Board* stated that the Commission has an open field to establish rules necessary to promote local telecommunications competition so long as the Commission can identify a basis in its governing statute for its proposed rules. There, the Supreme Court made plain that even for landline interconnection and local competition, where there is a more traditional bifurcation of jurisdiction over carriers, the FCC is in control of determining local competition policy and establishing the guidelines that state commissions are obligated to follow.

Commission's unique jurisdiction over CMRS have been pending since September of 1996.[144] Specifically, in these petitions and subsequent *ex parte* filings, CMRS carriers assert that interconnection between ILECs and CMRS providers is a matter of federal law and should be a matter of exclusively federal regulation, and should include the filing of interconnection agreements at the Commission and Commission resolution of interconnection disputes.[145]

The reason for this is simple. Congress determined in 1993 that CMRS carriers were no longer to be subject to the traditional split of federal-state jurisdiction over their operations, which, after all, are largely conducted over areas broader than the boundaries of a single state. Congress amended both Sections 2(b) and 332 to make plain that there was no constraint on the Commission's ability to set a federal regulatory framework for the development of CMRS as a landline service competitor.[146] The Commission was sufficiently convinced of this authority that in 1995 it proposed "preemption" of state supervised CMRS-ILEC interconnection arrangements and wholesale replacement of non-reciprocal compensation with an interim "bill and keep" compensation framework.

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[144] *See* Petitions for Reconsideration, Docket No 96-98. *See, e.g.*, Comcast/Vanguard Joint Petition at 22-23; CTIA Petition at 3.4.

[145] *See Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 800 n.21 (8th Cir. 1997); *see also* Letter to Chairman Reed E. Hundt, from Thomas E. Wheeler, President and CEO of CTIA, *ex parte* (filed Sept. 24, 1997); Letter to William F. Caton from Kathleen Q. Abernathy, Vice President of Federal Regulatory Affairs of AirTouch Communications, *ex parte* (filed August 7, 1997); Summary of Currently Effective Commission Rules for Interconnection Requests by Providers of Commercial Mobile Radio Services, *Public Notice*, 12 FCC Rcd. 15591 (1997).

[146] H.R. Rep. No. 213, 103rd Cong., 1st Sess. 490 (1993) (the purpose underlying Section 332 is to "establish a Federal regulatory framework to govern the offering of all commercial mobile services."). The Conference Report further explains that "the Conferees intend[ed] that the Commission . . . permit states to regulate radio service provided for basic telephone service if subscribers have no alternative means of obtaining basic telephone service . . . [and] it is not the intention of the [C]onferees that States should be permitted to regulate these competitive services simply because they employ radio as a transmission means." *Id.* at 493.

While several of the current interconnection rules have special provisions for CMRS carriers, such as provisions for renegotiation of existing non-reciprocal interconnection agreements, for the most part broadband CMRS carriers are treated under the interconnection rules as new CLEC entrants. From PCIA's perspective, this uniform approach misses an opportunity to tailor appropriate rules and policies that would further streamline the means by which CMRS carriers obtain compensation for landline calls placed to their customers. While the Commission's current interconnection rules provide some guidance to state commissions about incremental costs and appropriate elements to consider in landline carrier cost studies, the Commission should elaborate on its view of the appropriate elements for a wireless cost study. State-by-state development of rules of the road for CMRS cost studies should cease in favor of federal rules and a federal process that recognizes that CMRS networks may have higher costs than do landline networks.[147]

Nothing in the 1996 Act changed the Congressional direction of a federal regulatory framework for CMRS. And the Commission, while it declined to elaborate or to exercise its full jurisdiction over CMRS in implementing the interconnection provisions of the 1996 Act, left open the possibility that it would assert its authority if it deemed that action necessary. Now that there should be no remaining question of the FCC's jurisdiction, the FCC should resolve the outstanding CMRS-LEC interconnection and CMRS-IXC access issues raised in its 1995 CMRS Interconnection Notice in a manner that advances local competition. By taking whatever steps necessary, the Commission should advance the day when CMRS carriers can and do compete with landline local carriers.

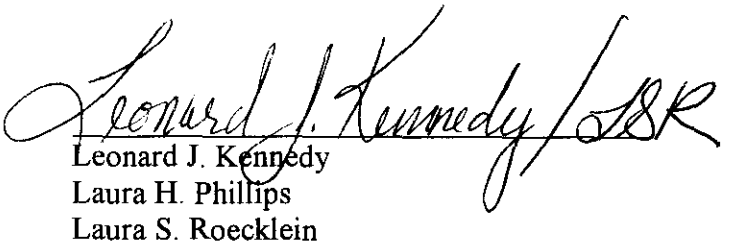
[147] It is important to note that in this scenario, the CMRS carrier will not be charging the wireline customer for the call; they will be charging the wireline carrier.

VIII. CONCLUSION

It is plain that the Commission must overcome many hurdles before CPP can be implemented. While marketplace solutions have contributed greatly to the success of CMRS, the market is inadequate to address the complexities of CPP implementation in today's telecommunications marktetplace. The Commission should also act expeditiously to finish the CMRS-LEC interconnection paradigm it began to develop in 1996 and do so under Section 332 of the Communications Act. Thus, PCIA respectfully requests that the Commission act in accordance with these comments. If the FCC does so, it will hasten the day when sustainable, facilities-based competition emerges in the local exchange market.

Respectfully submitted,

THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION



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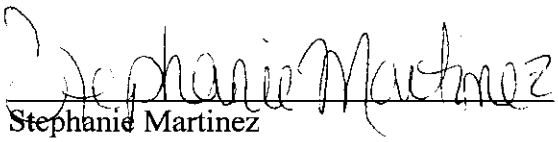

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